



House of Representatives

General Assembly

File No. 458

February Session, 2000

Substitute House Bill No. 5782

House of Representatives, April 6, 2000

The Committee on Judiciary reported through REP. LAWLOR of the 99th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

An Act Concerning Probate Matters.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 45a-596 of the general statutes is repealed and the
2 following is substituted in lieu thereof:

3 (a) The [surviving] parent of [any] an unmarried minor, except a
4 parent who has been removed as guardian of the person of the minor,
5 may by will or other writing signed by the parent and attested by at
6 least two witnesses appoint a person or persons as guardian or
7 coguardians of the person of such minor, [a] as guardian or
8 coguardians of the estate, or both, to serve if the parents who are
9 guardians of the minor are dead. If two or more instruments, whether
10 by will or other writing, contain an appointment, the latest effective
11 appointment made by the last surviving parent has priority. Such
12 appointment shall not supersede the previous appointment of a
13 guardian made by the court of probate having jurisdiction.

14 (b) The ward of such a [testamentary] guardian may, when he or she
15 is over the age of twelve, apply to the court of probate in which such
16 ward resides, for the substitution of a guardian or coguardians of [his]
17 the person to supersede the [testamentary] appointed guardian. The
18 court of probate may, upon such application and hearing, substitute
19 [such] the guardian or coguardians chosen by [such] the ward to be the
20 guardian or coguardians of the person of the ward after consideration
21 of the standards set forth in section 45a-617.

22 (c) A parental appointment becomes effective when the guardian's
23 written acceptance is filed in the court in which the nominating
24 instrument is probated, or, in the case of a nontestamentary
25 nominating instrument, in the court for the probate district where the
26 minor resides. Any guardian or coguardians appointed pursuant to
27 this section shall receive the [trust] appointment subject to the control
28 of the court of probate [as specified in this section] and subject to the
29 provisions and restrictions to which the [trust] last surviving parent, as
30 guardian, was subject [in the hands of the parent] at the time of [his]
31 such parent's decease. [A guardian or coguardians of the person shall
32 furnish a written acceptance of guardianship and, if] If the court deems
33 it necessary for the protection of the minor, a guardian or coguardians
34 of the person shall furnish a probate bond. A guardian or coguardians
35 of the estate shall furnish a probate bond. Upon such acceptance of
36 guardianship or furnishing such bond, [such] the guardian or
37 coguardians shall have the same power over the person and estate of
38 such minor as guardians appointed by the court of probate.

39 Sec. 2. Subsection (g) of section 45a-92 of the general statutes, as
40 amended by section 12 of public act 99-84, is repealed and the
41 following is substituted in lieu thereof:

42 (g) Upon the completion of each calendar year, and in any event on
43 or before the first day of [March] April of the succeeding calendar year,
44 each person required to make payment under this section shall make a

45 report signed under penalty of false statement to the Probate Court
46 Administrator, upon forms prescribed by and subject to regulations
47 promulgated by the administrator, of the following: (1) The gross
48 income received by virtue of such office; (2) actual expenses incurred
49 in connection with the office; (3) the net income of such office prior to
50 the payment of the assessment instalments hereinbefore provided; (4)
51 the amount paid during the preceding calendar year to the State
52 Treasurer on account of the foregoing estimate; and (5) the amount of
53 the difference, if any, between the amount so paid and the amount
54 actually due. This report shall be open to public inspection.

55 Sec. 3. Section 17a-11 of the general statutes, as amended by section
56 18 of public act 99-26, is repealed and the following is substituted in
57 lieu thereof:

58 (a) The commissioner may, in his discretion, admit to the
59 department on a voluntary basis any child or youth who, in his
60 opinion, could benefit from any of the services offered or administered
61 by, or under contract with, or otherwise available to, the department.
62 Application for voluntary admission shall be made in writing by the
63 parent or guardian of a child under fourteen years of age or by such
64 person himself if he is a child fourteen years of age or older or a youth.

65 (b) A child or youth voluntarily admitted to the department shall be
66 deemed to be within the care of the commissioner until such admission
67 is terminated. The commissioner shall terminate the admission of any
68 child or youth voluntarily admitted to the department within ten days
69 after receipt of a written request for termination from a parent or
70 guardian of any child under fourteen or from a child if fourteen years
71 of age or over, or youth, unless prior to the expiration of that time the
72 commissioner has sought and received from the Superior Court an
73 order of temporary custody as provided by law. The commissioner
74 may terminate the admission of any child or youth voluntarily
75 admitted to the department after giving reasonable notice in writing to

76 the parent or guardian of any child under fourteen years of age and to
77 a child over fourteen, and to any youth. Any child or youth admitted
78 voluntarily to the department may be placed in, or transferred to, any
79 resource, facility or institution within the department or available to
80 the commissioner except Long Lane School*, provided the
81 commissioner shall give written notice to such child or youth and to
82 the parent or guardian of the child of his intention to make a transfer at
83 least ten days prior to any actual transfer, unless written notice is
84 waived by those entitled to receive it, or unless an emergency
85 commitment of such child is made pursuant to section 17a-502.

86 (c) Not more than one hundred twenty days after admitting a child
87 or youth on a voluntary basis, the department shall petition the
88 probate court for the district in which a parent or guardian of the child
89 or youth resides for a determination as to whether continuation in care
90 is in the child's best interest and, if so, whether there is an appropriate
91 case service plan. Upon receipt of such application, the court shall set a
92 time and place for hearing to be held within thirty days of receipt of
93 the application, unless continued by the court for cause shown. The
94 court shall order notice of the hearing to be given by regular mail at
95 least five days prior to the hearing to the Commissioner of Children
96 and Families, and by certified mail, return receipt requested, at least
97 five days prior to the hearing to the parents or guardian of the child
98 and the minor, if over twelve years of age. If the whereabouts of the
99 parent or guardian are unknown, or if delivery cannot reasonably be
100 effected, then notice shall be ordered to be given by publication. In
101 making its determination the court shall consider the items specified in
102 subsection (d) of this section. The court shall possess continuing
103 jurisdiction in proceedings under this section and shall conduct a
104 further dispositional hearing whenever it deems necessary or
105 desirable, but at least every twelve months.

106 (d) Not more than twelve months after a child or youth is admitted
107 to the department on a voluntary basis, the commissioner shall file a

108 motion in the probate court [for the district in which a parent or
109 guardian of the child or youth resides] requesting a dispositional
110 hearing on the status of the child or youth. Upon receipt of such
111 motion, the court shall set a time and place for hearing to be held
112 within thirty days of receipt of the motion, unless continued by the
113 court for cause shown. The court shall order notice of the hearing to be
114 given in accordance with subsection (c) of this section. At the
115 dispositional hearing, all parties shall be heard and oral or written
116 reports, containing recommendations as to the best interests of the
117 child or youth may be presented. In determining its order of
118 disposition, the court shall consider among other things: (1) The
119 appropriateness of the department's plan for service to the child or
120 youth and his family; (2) the treatment and support services that have
121 been offered and provided to the child or youth to strengthen and
122 reunite the family; (3) if return home is not likely for the child or
123 youth, the efforts that have been made or should be made to evaluate
124 and plan for other modes of care; and (4) any further efforts which
125 have been or will be made to promote the best interests of the child or
126 youth. At the conclusion of the hearing, the court shall, in accordance
127 with the best interests of the child or youth, enter an appropriate order
128 of disposition. The order may: (A) Direct that the services being
129 provided, or the placement of the child or youth and reunification
130 efforts, be continued if the court, after hearing, determines that
131 continuation of the child or youth in services or placement is in the
132 child or youth's best interests or (B) direct that the child or youth's
133 services or placement be modified to reflect the child or youth's best
134 interest. [The court shall possess continuing jurisdiction in proceedings
135 under this section and shall conduct a further dispositional hearing
136 whenever it deems necessary or desirable, but at least every twelve
137 months.]

138 (e) The commissioner shall adopt regulations in accordance with
139 chapter 54 describing the documentation required for voluntary
140 admission and for informal administrative case review, upon request,

141 of any denial of an application for voluntary admission.

142 (f) Any person aggrieved by a decision of the commissioner denying
143 voluntary services may appeal such decision through an
144 administrative hearing held pursuant to chapter 54.

145 (g) Notwithstanding any provision of sections 17a-1 to 17a-26,
146 inclusive, and 17a-28 to 17a-49, inclusive, to the contrary, any person
147 already under the care and supervision of the Commissioner of
148 Children and Families who has passed his eighteenth birthday but has
149 not yet reached his twenty-first birthday, may be permitted to remain
150 voluntarily under the supervision of the commissioner, provided said
151 commissioner, in his discretion determines that such person would
152 benefit from further care and support from the Department of
153 Children and Families.

154 (h) Upon motion of any interested party in a probate court
155 proceeding under this section, the probate court of record may transfer
156 the file for cause shown to a probate court for a district other than the
157 district in which the initial or dispositional hearing was held. The file
158 shall be transferred by the probate court of record making copies of all
159 recorded documents in the court file, certifying each of them, and
160 delivering the certified copies to the probate court to which the matter
161 is transferred.

Statement of Legislative Commissioners:

In section 1, "for the probate district" was added before "where the minor resides." for accuracy.

JUD Committee Vote: Yea 40 Nay 0 JFS-LCO

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: None

Affected Agencies: Probate Court (Judicial Department)

Municipal Impact: None

OLR Bill Analysis**sHB 5782*****AN ACT CONCERNING PROBATE MATTERS.*****SUMMARY:**

This bill allows a parent to use documents other than a will to appoint a guardian, guardian of the estate, or both for an unmarried minor child when the parent dies.

It removes the requirement that the Department of Children and Families commissioner file in the probate court for the district where the parent, guardian, child, or youth resides for dispositional hearings in cases of voluntary commitment of children. As under current law, the probate court can transfer the file for cause on a motion of a party to a probate court in a district other than the one that had the initial or dispositional hearing.

The bill also moves the date for reporting of income by probate judges to April 1 of each year rather than March 1. The report allows the probate court administrator to monitor court income for purposes of payments and allocations. As under current law, the report includes information on income received from the office, expenses, and various payments.

Finally, the bill makes technical changes.

EFFECTIVE DATE: October 1, 2000

APPOINTMENT OF GUARDIANS

This bill allows a parent to use documents other than a will to appoint a guardian, guardian of the estate, or both for an unmarried minor child when the parent dies. The document must be signed by the parent and attested by at least two witnesses.

The bill removes the requirement that only the surviving parent can make an appointment. It also prohibits a parent removed as guardian from making an appointment.

The bill specifies that the latest effective appointment by the last surviving parent has priority if there are multiple documents appointing guardians, including wills. As under current law, an appointment does not supersede an earlier appointment by the probate court and the ward of a guardian who is at least age 12 can petition the probate court to substitute another person as guardian.

As under current law, a guardian must file written acceptance of guardianship. The bill makes the appointment effective when the guardian files written acceptance in either the court where the minor resides or, in the case of a will, where the will is probated.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Report

Yea 40 Nay 0